

Council

C/Analysis/2019/1

Analysis Document

Original: English

Date: May 28, 2019

ANALYSIS DOCUMENT AS A BASIS FOR THE PROCEDURE FOR THE EXAMINATION BY CORRESPONDENCE OF THE PLANT VARIETY PROTECTION BILL OF NIGERIA CONCERNING ITS CONFORMITY WITH THE 1991 ACT OF THE UPOV CONVENTION*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. By letter dated April 19, 2019, addressed to the Secretary-General of UPOV, His Excellency, Mr. Audu Ogbeh, Minister for Agriculture and Rural Development of Nigeria, requested the examination of the Plant Variety Protection (PVP) Bill of Nigeria (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a copy of the Draft Law in English.

PROCEDURE OF EXAMINATION OF LAWS OR DRAFT LAWS BY CORRESPONDENCE

2. Article 34(3) of the 1991 Act provides that "any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

3. In the context of the organization of a single set of sessions from 2018, and in order to facilitate the examination of laws of future members, the Council, at its fifty-first ordinary session, held in Geneva on October 26, 2017, approved the proposals to amend document UPOV/INF/13/1 "Guidance on how to become a member of UPOV", in order to introduce a procedure for examination of laws by correspondence and adopted a revision of document UPOV/INF/13/1 (document UPOV/INF/13/2) (see document C/51/22 "Report", paragraph 20(g)).

4. On the above basis, the procedure of examination of laws or draft laws by correspondence in document [UPOV/INF/13/2](#) "Guidance on how to become a member of UPOV" provides as follows:

Applicability of the procedure of the examination of the Draft Law by correspondence

"11. The procedure of examination of laws by correspondence will be applicable if:

"(i) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council; and

"(ii) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention."

5. In accordance with paragraph 11 of document UPOV/INF/13/2, the letter with the request of examination of the Draft Law was received on April 29, 2019, being more than six months before the date of the fifty-third ordinary session of the UPOV Council. The Office of the Union anticipates a positive decision and has not identified any significant issues concerning the conformity of the Draft Law with the UPOV Convention.

Posting of the analysis document and the Draft Law on the UPOV website

“14. [...]

“(i) the analysis document and the law will be posted on the UPOV website within six weeks of receipt of the request and members and observers to the Council will be informed accordingly; and

“(ii) members or observers will have the opportunity to provide comments within 30 days from the date the analysis document is posted on the UPOV website.”

6. In accordance with paragraph 14 of document UPOV/INF/13/2, the Office of the Union has posted this Analysis document (document C/Analysis/2019/1) concerning Nigeria in order to provide an opportunity for comments from Council members and observers by June 27, 2019 (see UPOV Circular E-19/080 of May 28, 2019). The Analysis document contains, in Annex II, the Draft Law of Nigeria.

BACKGROUND

7. On June 23, 2017, Mr. Phillip Olosegun Ojo, Director General, National Agricultural Seeds Council (NASC) of Nigeria, requested the assistance of the Office of the Union in the development of legislation on plant variety protection and in the procedure of becoming a member of UPOV. Since 2017, the Office of the Union has provided several comments on different versions of draft laws.

8. On September 17, 2018, H. E. Mr. Ogbeh, requested the granting of observer status to Nigeria at the Council, Administrative and Legal Committee (CAJ) and the Technical Committee (TC) and expressed the intention of Nigeria to become a UPOV member.

9. From January 28 to 30, 2019, in Geneva, during the bilateral meetings with the Delegation of Nigeria at the “Workshop on drafting legislation in accordance with the UPOV Convention” (Workshop for Laws), the Office of the Union provided comments on a previous version of the Draft Law, identifying those provisions that did not correspond to the 1991 Act.

10. On April 15, 2019, the Office of the Union participated at the “Seed Connect Conference” in Abuja, Nigeria, and in a bilateral meeting to explain the last comments from the Office of the Union in relation to relevant provisions of the 1991 Act. On April 16, 2019, the Office of the Union received the confirmation that the updated version of the Draft Law incorporated the last comments provided by the Office of the Union and the conclusions at the meeting in Abuja.

BASIS FOR THE PROTECTION OF NEW PLANT VARIETIES IN NIGERIA

11. In Nigeria, the protection of new plant varieties in accordance with the 1991 Act will be governed by the Draft Law, once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act Definitions

12. Section 56 of the Draft Law contains definitions of breeder and variety corresponding to the definitions in Article 1(iv) and (vi) of the 1991 Act, respectively.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

13. Sections 1(c) and 5(a) of the Draft Law contains provisions corresponding to the basic obligation provided by Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

14. Section 12 of the Draft Law provides that “(t)he protection of varieties under this Act shall apply to all plant genera and species” corresponding to the provisions of Article 3(2)(ii) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

15. In relation to Sections 17, 18 and 20 of the Draft Law concerning the filing of applications, the Draft Law does not place any restriction on the nationality, place of residence of natural persons or place of registered offices for legal entities. Section 21 of the Draft Law concerning the “Right of Priority” covers the requirements for members of the Union. The Draft Law corresponds to the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

16. Sections 13 to 16 of the Draft Law contain the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

17. Section 51 contains provisions concerning the optional provision of Article 6(2) “Varieties of recent creation” of the 1991 Act, as follows:

“(1) Where, according to Section 12, this Act applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of Section 14 even where the sale or disposal of to others described in that paragraph took place in Nigeria within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

“(2) Within twelve months from the date of commencement of this Act, the breeder of an existing variety of recent creation may apply to the Registrar in respect of that variety to benefit from the provisions under paragraph 1 of this Section.”

Article 10 of the 1991 Act: Filing of Applications

18. Section 20 of the Draft Law contains provisions on the filing of applications. The Draft Law does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

19. Section 21 of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

20. Section 27 of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

21. Section 28 of the Draft Law contains provisions on provisional protection corresponding to the provisions of Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder’s Right

22. Sections 29 of the Draft Law contain provisions on the scope of the breeder’s right corresponding to the provisions of Article 14 of the 1991 Act.

23. Section 29(3)(b) of the Draft Law contains provisions concerning the optional provision of Article 14(3) "Acts in respect of certain products" of the 1991 Act as follows:

"(3) Subject to the provisions of sections 30 and 31 of this Act, the acts referred to in paragraphs (a) to (g) of sub-section (1) of this section in respect of –

[...]

"(b) products made directly from harvested material of the protected variety falling within the provision of paragraph (a) of this subsection through the unauthorized use of the said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material."

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

24. Section 30(1) of the Draft Law contains provisions concerning the compulsory exceptions to the breeder's right corresponding to the provisions of Article 15(1) of the 1991 Act.

25. Section 30(2) and (3) of the Draft Law contains provisions concerning the optional exception under Article 15(2) of the 1991 Act, as follows:

"(2) For the list of agricultural crops specified by the Minister, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or a variety referred to in section 29 (4)(a) or (b) of this Act.

"(3) The reasonable limits and the means of safeguarding the legitimate interest of the holder of the breeder's right shall be specified in the regulations made pursuant to this Act."

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

26. Section 31 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which correspond to the provisions of Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

27. Section 40 of the Draft Law contains provisions concerning the restrictions on the exercise of the breeder's right which correspond to the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

28. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

29. Section 32 of the Draft Law contains provisions concerning the duration of the breeder's right which correspond to the provisions of Article 19 of the 1991 Act, as follows:

"(1) Except as specified in part VII of this Act, the breeders' rights granted under this Act shall expire after 20 years from the date of the grant except for trees and vines whose breeders' rights shall expire after 25 years from the date of grant.

"(2) The Registrar may extend the duration referred to in subsection (1) of this section for an additional five years where he receives a six month written notice from the holder of the Breeder's Right before the expiration of the original term."

Article 20 of the 1991 Act: Variety Denomination

30. Section 19 of the Draft Law contains provisions on variety denominations corresponding to the provisions of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

31. Section 35 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

32. Section 36 of the Draft Law contain provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

33. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Section 33 of the Draft Law provides as follows:

"(1) A breeder's right is protected by both civil and criminal measures stipulated in any written law.

"(2) A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought in the court."

34. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Section 5 of the Draft Law provides as follows:

"The functions of the Office shall be to -

- (a) grant breeders' rights;
- (b) maintain a register and provide information on plant breeders' rights issued in Nigeria;
- (c) facilitate transfer and licensing of plant breeders' rights;
- (d) collaborate with local and international bodies whose functions relate to plant breeders' rights matters; and
- (e) perform any other functions as are necessary for the furtherance of the objects of this Act."

35. Sections 23 and 27(5)(c) of the Draft Law correspond to the obligation to publish information concerning applications for and grant of breeders' rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

36. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. On that basis, once the Draft Law is adopted with no changes and the Law is in force, Nigeria would be in a position "to give effect" to the provisions of the 1991 Act, as required by its Article 30(2).

[Annexes follow]

**OFFICE OF THE HONOURABLE MINISTER
FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT**

FEDERAL REPUBLIC OF NIGERIA

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NASC/FMA/RWHMA/723/vol.1/189

19th April 2019

Mr. Francis Gurry

Secretary-General

International Union for the Protection of New Varieties of Plants
(UPOV)

34, chemin des Colombettes

1211 Geneva 20

Switzerland

Dear Sir,

**SUBMISSION OF FORMAL REQUEST TO UPOV COUNCIL FOR
CONSIDERATION OF THE DRAFT PVP BILL OF NIGERIA BY
CORRESPONDENCE**

I have the pleasure to inform you that the Parliament of Nigeria is in the process of adopting the bill for an Act for the Protection of Plant Varieties.

2. Nigeria intends to adhere to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (UPOV Convention).
3. Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate it if the Council of UPOV could examine the conformity of the attached Draft Bill of Nigeria with the provisions of the UPOV Convention.
4. Please accept the assurances of my ward regards.

Audu Ogbah, OFR

Honourable Minister of Agriculture



PLANT VARIETY PROTECTION (PVP) BILL, 2019

- A bill for an Act for the Protection of Plant Varieties, to establish a Plant Variety Protection office for the promotion of increased staple crop productivity for smallholder farmers in Nigeria and for related matters.

[] Commencement

PART I

Preliminary provisions

1. Objectives

The objectives of this Act are to –

- a) Promote increased staple crop productivity for smallholder farmers in Nigeria and encourage investment in Plant Breeding and crop variety development
- b) Promote increased mutual accountability in Seed sector
- c) Protection of new varieties of plants

2. Application

This Act applies to

- a) A breeder
- b) Any plant genera and species.

PART II

Plant Variety Protection Office

3. Establishment of Plant Variety Protection rights office

There is established an office to be known as the Plant Variety Protection Office (herein after referred to as the Office) which shall be domiciled in the National Agricultural Seeds Council

4. Appointment of Registrar

1. The Director General of the National Agricultural Seeds Council shall be the Registrar of the Plant Variety Protection Office and he shall appoint an officer as Deputy Registrar. –
 - (a) The Deputy Registrar shall have at least a Masters Degree in Plant Breeding, Seed Science, Agronomy or in related fields with a minimum of 7 years cognate experience who shall perform the functions assigned to him by the Registrar ; and
 - (b) There shall for the purpose of this Act be appointed such other grades of assistants as the Registrar may consider necessary for the enforcement of the provisions of this Act.
2. The Deputy Registrar shall be responsible for the day to day management and administration of the Office and answerable to the Registrar.

5. Functions of the Office

The functions of the Office shall be to -

- (a) grant breeders' rights;
- (b) maintain a register and provide information on plant breeders' rights issued in Nigeria;
- (c) facilitate transfer and licensing of plant breeders' rights;
- (d) collaborate with local and international bodies whose functions relate to plant breeders' rights matters; and
- (e) perform any other functions as are necessary for the furtherance of the objects of this Act.

6. Register of Plant Variety Protections' rights

- (1) The Registrar shall maintain a breeders' rights register in which the information required to be registered under this Act shall be entered.
- (2) The information to be listed in the register for each registered variety shall include -
 - (a) the species and denomination of a variety;
 - (b) the full name and address of the -
 - (i) applicant or holder of the breeder's right, and
 - (ii) person who bred or discovered and developed the variety, in case such person is different from the applicant or holder of the breeder's right;
 - (c) the date and time of inception of the breeder's right;
 - (d) any other matter which -
 - (i) is required by this Act or any other written law to be entered in the Register, and
 - (ii) may affect the validity or ownership of plant breeders' rights; and
 - (e) any other information which may be required by Regulations made pursuant to this Act.
- (3) The Register shall be a prima facie evidence of any matter entered therein.

7. Register to be evidence

- (1) The register shall be *prima facie* evidence of all matters directed or authorized by the Act to be noted therein.
- (2) A certificate by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorized by this Act to be done, has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or an extract from the register, certified by the registrar, shall be admitted in evidence in any court without further proof or production of the register.

8. Inspection of Register

- (1) The Register shall be open for inspection by any member of the public during business hours.
- (2) A certified copy of any entry in the Register shall be given upon request and payment of the fees prescribed in the regulations made pursuant to this Act .

9. Plant Variety Protection Advisory Committee

- (1) An ad-hoc committee to be known as the Plant Variety Protection' Advisory Committee (hereinafter referred to as the Committee) may from time to time be established to perform the functions specified in section 10 of this act.

- (2) The Director General shall, subject to gender consideration, appoint members of the Committee and it shall be composed of one representative each from-
- (a) the Council, who shall be the Chairman of the Committee;
 - (b) the Ministry;
 - (c) a registered Plant Breeder Association;
 - (d) a registered Seed Traders Association;
 - (e) the registered farmers' association;
 - (f) a University offering a course on Plant Breeding;
 - (g) the Attorney General of the Federation's office;
 - (h) the National Office for Technology Acquisition and Promotion;
 - (i) the National Quarantine Services;
 - (j) the National Biotechnology Development Agency;
 - (k) the National Biosafety Management Agency;
 - (l) the National Crop Variety Release Committee;
 - (m) Registrar of Trademarks,
 - (n) Registrar of Patents and Design; and.
 - (o) the deputy Registrar
- (3) The Legal unit of the Council shall be the secretary of the Committee.

10. Functions of the Committee

The Committee shall -

- (a) through the Director General of NASC advise the Minister on efficient enforcement of this Act;
- (b) receive reports of plant breeders' rights applications from the Registrar;
- (c) receive information on the plant breeders' rights reports and on the Registrar's tests results; and
- (d) manage the operations of the Fund.

11. Powers of the Committee

The Committee shall -

- (a) make its own rules of procedure;
- (b) give the Registrar directives of a specific and general nature; and

call on breeders and any other interested person for hearing on plant variety protection matters .

PART III

Varieties to be protected

12. Genera and Species to be protected

The protection of varieties under this Act shall apply to all plant genera and species.

13. Conditions of Protection

- (1) The breeder's right shall be granted with respect to a variety which is new distinct, uniform and stable.

- (2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the –
- (a) variety is designated by a denomination in accordance with the provisions of section 19 of this Act; and
 - (b) applicant complies with the provisions of this Act and that he pays the fees prescribed in the Regulations made pursuant to this Act.

14. Novelty

- (1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to any person by or with the consent of the breeder, for purposes of exploitation of the variety in -
- (a) Nigeria, earlier than one year before the date of filing the application; and
 - (b) a territory other than Nigeria earlier than -
 - (i) four years, or
 - (ii) six years before the said date in the case of a tree or vine.
- (2) Subject to subsection (1) of this section, the following acts shall not be considered to result in the loss of novelty -
- (a) a trial of the variety not involving sale or disposal of to others for purposes of exploitation of the variety; and
 - (b) sale or disposal of to –
 - (i) others without the consent of the breeder,
 - (ii) any person that forms part of an agreement for the transfer of rights to the successor in title,
 - (iii) any person that forms part of an agreement under which a person multiplies propagating material of the variety concerned on behalf of the breeder, provided that the property in the multiplied material reverts to the breeder and the multiplied material is not used for the production of another variety,
 - (iv) any person that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials with a view of evaluating the variety,
 - (v) any person that forms part of the fulfillment of a statutory or administrative obligation concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade,
 - (vi) any person of harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in paragraphs (iii) to (v) provided that the said material is sold or disposed of without variety identification for the purposes of consumption, and
 - (vii) any person due to or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition.

15. Distinctness

- (1) A variety shall be deemed to be distinct where it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.
- (2) For purposes of subsection (1) of this section, the filing of an application for the granting of breeder's right or for the entering of another variety in the official register of varieties in any country, shall be deemed to render that other variety a matter of a common knowledge from the date of the application, provided that the application leads to the granting of breeder's right or to the entering of the said other variety in the official register of varieties.

16. Uniformity and stability

A variety shall be deemed to be –

- (a) uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics; and
- (b) stable, where its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

PART IV

Application for Plant Variety Protection rights

17. Application for Plant Variety Protection's right

A breeder of a new variety may apply for the grant of a breeder's right for that variety.

18. The Contents of an application

The application for breeder's right relating to a variety shall contain -

- (a) the name and address of the applicant;
- (b) where the applicant is the successor in title of the person who bred, or discovered and developed, the variety: -
 - (i) proof of title or authority in the form and content satisfactory to the Registrar or as may be specified by Regulations establishing the existence and validity of the assignment or succession; and
 - (ii) the name and address of the person who bred, or discovered and developed, the variety;
- (c) the proposed denomination and the description of the characteristics of the variety as the Registrar may require;
- (d) samples of the propagating material in such quantities as the Registrar may require; and
- (e) any additional information, documents and material that may be required in connection with the application as may be prescribed in the Regulations.

19. Variety Denomination

- (1) The variety shall be designated by a denomination which shall be its generic designation.
- (2) Subject to subsection (6) of this section, the rights in the designation registered as the denomination of the variety shall not hamper the free use of the denomination in connection with the variety even after the expiration of the breeder's right.
- (3) The denomination -
 - (a) shall enable the variety to be identified;
 - (b) shall not mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
 - (c) shall be different from every denomination which designates, in the territory of any member of an international organization dealing with plant breeders' rights matters to which Nigeria is a party, an existing variety of the same plant species or of a closely related species; and
 - (d) may not consist solely of figures except where this is an established practice for designating varieties.

- (4) The denomination of the variety shall be submitted by the applicant to the Registrar and where the Registrar finds that the denomination does not satisfy the requirements of this section, he shall –
 - (a) refuse to register it; and
 - (b) direct the applicant to propose another denomination within the period to be prescribed in the Regulations made pursuant to this Act.
- (5) The Registrar shall register the denomination at the time the breeder's right is granted.
- (6) Prior rights of third persons shall not be affected and where, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of subsection (10) of this section, is obliged to use it, the Registrar shall direct the applicant to submit another denomination for the variety.
- (7) Where the variety is already protected by a member of an international organization dealing with the plant breeders' rights matters to which Nigeria is a party or an application for the protection of the same variety is filed in a member of such organisation, the variety denomination which has been proposed or registered in that other member of the organization shall be submitted by the applicant to the Registrar.
- (8) The Registrar shall –
 - (a) register the denomination submitted, unless he considers the denomination unsuitable within Nigeria; and
 - (b) direct the applicant to submit another denomination where the denomination is unsuitable.
- (9) The Registrar shall in writing, inform the authorities of the members of UPOV on matters concerning variety denominations, in particular the submission, registration and cancellation of the denominations.
- (10) Any person who, within Nigeria, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right of that variety, except where prior rights prevent such use.
- (11) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination and where such an indication is so associated, the denomination shall nevertheless be easily recognizable.

PART V

Consideration and disposition of application

20. The filling date of an application

- (1) Shall be the date which the application was filed at the Registry by the applicant .
- (2) For the purposes of this section, an application shall be deemed to have been submitted in the form prescribed under this Act.

21. Right of Priority

- (1) Any breeder who has duly filed an application for the protection of a variety in one of the members of an international organization dealing with plant breeder's right matters which Nigeria is a party shall enjoy a right of priority for a maximum period of twelve months.
- (2) The period referred to in subsection (1) of this section shall be computed from the date of filing the first application and the day of filing shall not be included in the latter period.
- (3) The applicant shall, in order to benefit from the right of priority in the subsequent application in Nigeria, claim within twelve months the priority of the first application.
- (4) The Registrar may, direct the applicant to furnish, within a period of not less than three months from the filing date, a certified true copy of the documents which constitute the first application

that was filed and samples or other evidence indicating that the variety which is the subject matter of both applications is the same.

- (5) The applicant may submit to the Registrar any necessary information, document or material required in this Act for the purpose of the examination within a period of two years after the expiration of the period of priority or a period of six months where the first application is rejected or withdrawn.

22. Amendment of application

- (1) An applicant may amend his application for the grant of a breeder's right for a variety at any time without affecting its filing date, provided that the amendment does not affect the variety which is the subject of the application.
- (2) Where any amendment of an application occurs after publication of a notice under section 23 of this Act, the applicant shall be liable to pay the cost of re-publication.

23. Publication of Notice of Application

The Registrar shall publish in the Federal Government Gazette or in two national daily newspapers of wide circulation, a notice of every filed application for plant breeder's right that satisfies the requirements of the Act specifying –

- (a) the name and address of the applicant;
- (b) the filing date of the application;
- (c) the proposed denomination; and
- (d) such other information as may be specified in the Regulations.

24. Objection to the proposed grant of breeder's right

- (1) Any person may submit to the Registrar a written objection to the matter specified in the notice under section 23 of this Act within one month of its publication.
- (2) A notice of objection made under sub-section (1) of this section shall -
 - (a) specify the grounds on which the objection is based;
 - (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a) of this sub-section; and
 - (c) be supported by an affidavit or other proof, where required by the Registrar.

25. Grounds for Objection

An objection submitted pursuant to section 24 of this Act shall be based on the allegation that the -

- (a) applicant is not entitled to file the application;
- (b) application contains a material misrepresentation; and
- (c) contents of the application do not comply with this Act or the Regulations.

26. Notice to the applicant and reply to an objection

- (1) The Registrar shall, within two weeks from the date on which an objection has been filed –
 - (a) notify the applicant that an objection has been made pursuant to section 24 of this Act; and
 - (b) provide the applicant with a copy of the notice of objection and all the supporting documents that have been submitted with the objection.

- (2) The applicant may submit a written response to the objection to the Registrar within two weeks or such further period as the Registrar may allow from the date of the notification made under sub-section (1) of this section.
- (3) Where the applicant submits a response in pursuance to sub-section (2) of this section, he shall send a copy to the person making the objection.
- (4) The Minister may reply to any objection made against the Federal Government.

27. Disposition of applications

- (1) The Registrar shall examine an application and reply upon –
 - (a) completion of the notice requirements under section 23 of this Act; and
 - (b) the expiration of time limits for objections and replies.
- (2) Upon any decision to grant a breeder's right which require an examination for compliance with the conditions specified under this Act, the Registrar may, in the course of the examination, grow or cause to be grown the Variety or carry out other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.
- (3) The Registrar may, for the purpose of an examination, direct the breeder to provide the necessary information, document or material.
- (4) The Registrar shall grant the breeder's right where he concludes that -
 - (a) the applicant is entitled to file the application;
 - (b) the application conforms to the requirements of this Act;
 - (c) no objection has been filed;
 - (d) where an objection has been filed, there are no grounds for objection; and
- (5) For each variety for which breeder's right is granted, the Registrar shall-
 - (a) issue a certificate of registration to the holder;
 - (b) enter the variety in the register as provided for under section 6 of this Act; and
 - (c) publish a notice of the grant of breeder's right and the approved denomination in the Gazette.

PART VI

Provisional and final protection

28. Provisional protection

The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period between the publication of the application under section 23 of this Act for the grant of a breeder's right and the date of the grant of that right, has carried out acts which, once the right is granted, require the breeder's authorization as provided for under section 29 of this Act.

29. Scope of the breeder's right, essentially derived and certain other varieties

- (1) Subject to sections 30 and 31 of this Act, the following acts in respect of the propagating material of the protected variety shall require the authorization of the holder of the breeder's right-
 - (a) production or reproduction(multiplication);
 - (b) conditioning for the purpose of propagation;
 - (c) offering for sale;
 - (d) selling or marketing;
 - (e) exporting;

- (f) importing; and
 - (g) stocking for any purposes mentioned in the paragraphs (a) to (f) of this subsection.
- (2) The holder of the breeder's right may give his authorization subject to conditions and limitations.
- (3) Subject to the provisions of sections 30 and 31 of this Act, the acts referred to in paragraphs (a) to (g) of sub-section (1) of this section in respect of –
- (a) harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said propagating material; and
 - (b) products made directly from harvested material of the protected variety falling within the provision of paragraph (a) of this subsection through the unauthorized use of the said harvested material, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.
- (4) The provisions of sub-sections (1), (2) and (3) of this section shall apply to a variety -
- (a) that is essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - (b) which is not clearly distinguishable in accordance with section 15 of this Act from the protected variety; and
 - (c) whose production requires the repeated use of the protected variety.
- (5) For the purposes of paragraph (a) of subsection (4), a variety shall be deemed to be essentially derived from another variety (initial variety) when -
- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotype of the initial variety;
 - (b) it is clearly distinguishable from the initial variety; and
 - (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (6) For the purpose of this section, an essentially derived variety may be obtained through –
- (a) the selection of a natural or induced mutant or of somaclonal variant;
 - (b) the selection of a variant individual from plants of the initial variety; and
 - (c) backcrossing, or transformation by genetic engineering.

30. Exceptions to the breeder's right

- (1) The Breeder's right shall not extend to any act carried out -
- (a) privately and for non-commercial purposes;
 - (b) for experimental purposes; and
 - (c) for the purpose of breeding any other variety, and, except where the provisions of section 29 (4) to (6) of this Act apply, any act referred to in section 29 (1) to (3) in respect of such other varieties.
- (2) For the list of agricultural crops specified by the Minister, the breeder's right shall not extend to a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the holder of the breeder's right, uses for propagating purposes on his own holding, the product of the harvest which he has obtained by planting on his own holding, the protected variety or a variety referred to in section 29 (4)(a) or (b) of this Act.
- (3) The reasonable limits and the means of safeguarding the legitimate interest of the holder of the breeder's right shall be specified in the regulations made pursuant to this Act.

31. Exhaustion of the breeder's right

- (1) The breeder's right shall not extend to an act concerning any material of the protected variety or of a variety covered by the provisions of section 29(4) to (6) of this Act, which has been sold or otherwise marketed by the breeder or with his consent in Nigeria, or any material derived from the said material, unless the act involves-
 - (a) further propagation of the variety in question; or
 - (b) an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
- (2) In this section "material" means, in relation to a variety-
 - (a) propagating material of any kind;
 - (b) harvested material, including entire plants and parts of plants; and
 - (c) any product made directly from the harvested material.

32. Duration of a plant breeders' right

- (1) Except as specified in part VII of this Act, the breeders' rights granted under this Act shall expire after 20 years from the date of the grant except for trees and vines whose breeders' rights shall expire after 25 years from the date of grant.
- (2) The Registrar may extend the duration referred to in subsection (1) of this section for an additional five years where he receives a six month written notice from the holder of the Breeder's Right before the expiration of the original term.

33. Protection and damages for infringement of a breeder's right

- (1) A breeder's right is protected by both civil and criminal measures stipulated in any written law.
- (2) A suit by the holder of breeder's right against any person who infringes the breeder's right may be brought in the court.

34. Fees

The holder of breeder's right shall pay fees at time and rate specified in the Regulations made pursuant to this Act.

PART VII

Nullity, cancellation and surrender of breeder's right

35. Nullity of the breeder's right

- (1) The Registrar shall declare a breeder's right granted by him null and void where it is established that -
 - (a) the variety did not comply with the conditions specified in sections 14 or 15 at the time the breeder's right was granted;
 - (b) where the grant of the breeder's right has been essentially based upon information and documents furnished by the applicant, the conditions laid down in paragraphs (a) or (b) of section 16 were not complied with at the time of the grant of the breeder's right; or
 - (c) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

36. Cancellation of the breeder's right

- (1) The Registrar may cancel a breeder's right granted by him where he has established that the conditions specified in paragraphs (a) or (b) of section 16 of this Act are no longer fulfilled.
- (2) Without prejudice to sub-section (1) of this section, the Registrar may cancel a breeder's right granted by him, within the prescribed period provided in the Regulations made pursuant to this Act, where the holder of the breeder's right -
 - (a) does not provide the Registrar with the information, documents or materials deemed necessary for verifying the maintenance of the variety;
 - (b) fails to pay the fees which may be payable to keep his right in force; or
 - (c) does not propose another suitable denomination where the denomination of the variety is cancelled after the grant of the right.

37. Notification of nullification and cancellation

- (1) The Registrar shall notify the holder of the breeder's right of any decision made pursuant to sections 35 and 36 of this Act and the grounds for such decision.
- (2) A person who receives the notice referred to in sub-section (1) of this section may send a written objection to the Registrar within thirty days from the date of receipt of the notification.
- (3) The Registrar may hold, within a reasonable time after receipt of an objection, a hearing or may decide the matter based on the written submission of the interested parties.
- (4) Where the Registrar nullifies and cancels any breeder's right under this section, he shall publish the nullification or cancellation by a notice in *the Gazette or two daily national newspapers of wide circulation*, after the expiration of thirty days from the date of the decision or following a decision made under sub-section (3) of this section.
- (5) The holder of the breeder's right shall return to the Registrar any certificate of the grant of a breeder's right that has been nullified or cancelled under this section.

38. Surrender of breeder's right

- (1) A holder of a breeder's right may, by written notice to the Registrar, surrender the right.
- (2) The Registrar shall, within one month from the date of receiving the notice referred to sub-section (1) of this section, terminate the breeder's right and publish a notice in the *Gazette or two daily national newspapers* of the termination.

PART VIII

Authorization and assignments

39. Authorization or assignment of breeder's right

The holder of breeder's right may assign or authorize any person, to undertake any activity described or referred to in section 29 of this Act.

40. Restrictions on the exercise of breeder's right

- (1) The free exercise of a breeder's right shall, unless where expressly provided in this Act, not be restricted for reasons other than of public interest.
- (2) When any such restriction has the effect of the Registrar authorizing a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

41. Information on authorization or assignment of breeder's right

- (1) A person authorized under section 39 of this Act may, in not more than sixty days from the effective date of the authorization –
 - (a) notify the Registrar of the transaction; and
 - (b) submit a copy of the authorization agreement to the Registrar.
- (2) The Registrar may prescribe the form and manner of the notification to be made under subsection (1) of this section.
- (3) Upon assignment or other transmission of all of a breeder's right, the assignee or recipient shall notify the Registrar for the purposes of making changes in the Register.

PART IX

Appeals

42. Appeals from decision of Registrar

- (1) An appeal from the decisions of the Registrar made under this Act shall lie to the Minister.
- (2) A person who is aggrieved by any of the decisions of the Registrar may appeal to the Minister by submitting a notice of the appeal within sixty days following the publication or of the receipt of the individual notice of such decision by the person whose interest is the source or subject of the appeal.

43. Decisions of the Minister on Appeals

- (1) The Minister –
 - (a) may conduct an investigation, if it deems it necessary to do so, and may hold a hearing of the appeal or make a decision based on written submissions;
 - (b) may confirm, set aside or vary any decision or action of the Registrar and may order the Registrar to carry out his decision; and
 - (c) shall give the reasons for his decision in writing, and copies of the decision shall be given to the appellant, the Registrar and any other interested party.
- (2) Subject to the provisions of this section, a decision of the Minister shall be final.

PART X

Plant breeders' rights development fund, accounts, audit and annual report

44. Plant Breeders Rights Development Fund

- (1) The Minister shall, after consultation with the Minister responsible for finance matter, establish a fund to be known as the "Plant Breeders' Rights Development Fund" into which money realized under this Act shall be kept.
- (2) The sources of moneys for the fund shall include –
 - (a) fees payable under this Act; and
 - (b) any donation or grant from the government or any other person.
- (3) The purposes of the fund shall be for the financing of -
 - (a) development and promotion of the plant breeders' rights;
 - (b) training of plant breeders on matters concerning plant breeders' rights;
 - (c) establishment and maintenance of the variety collection and data base; and

- (d) any other activity relating to administration of the Act.
- (4) In addition to the functions entrusted to it under section 10 of this Act, the committee shall operate as the fund committee, whereby –
 - (a) the registrar shall be a member of the fund committee and shall serve as the secretary of the fund; and
 - (b) the fund committee shall make rules and procedures for the operations and management of the fund provided that such rules and procedures shall not be operative unless approved by the Minister.
- (5) Separate books of accounts and other records in respect of the fund shall be kept properly and maintained and be subject to audit.

45. Accounts and audit

- (1) The plant breeders' rights office shall cause to be kept and maintain proper books of accounts with respect to –
 - (a) all sums of money received and expended by the Plant Breeders' Rights Office and matters in respect of which the receipt and expenditure take place;
 - (b) all the assets and liabilities of the Plant Breeders' Rights Office and the Fund; and
 - (c) the income and expenditure statement of the Plant Breeders Rights Office.
- (2) The financial year of the Plant Breeders Rights Office and the fund shall end on 31th December of each year.
- (3) The books of accounts of the Plant Breeders' Rights Office and the Fund shall be audited at the end of each financial year by the Accountant General and Auditor General.

46. Annual report to be submitted to The Minister

- (1) The Registrar shall, submit to the Minister a copy of the audited accounts and annual report on the activities of the Plant Breeders' Office in respect of that particular year not later than six months after the end of each financial year.
- (2) The Registrar shall, within a period of six months or such longer period as the National Assembly may by resolution appoint after the accounts have been audited, lay the audited accounts and audit report before the National Assembly.

PART XI

Offences and penalties

47. Offences and penalties

- (1) Any person who knowingly-
 - (a) makes a false entry in the Register;
 - (b) makes a writing which falsely purports to be a copy of an entry in the Register or of a document lodged with the Registrar;
 - (c) produces or tenders a false entry of copy as evidence;
 - (d) submits a false document or makes a false statement or representation to the Registrar in regard to any action described under this Act;
 - (e) obstructs or hinders the Registrar or any officer in the exercise of his powers or the carrying out of his functions under this Act;
 - (f) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse to appear;

- (g) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to r to produce any document or answer any question which he may be lawfully required to produce or answer;
 - (h) contravenes the obligation to use the denomination as required by subsection 10 of section 19 of this Act;
 - (i) gives false information in any application or makes any false statement in evidence,
 - (j) violates breeders right,
 - (k) any person who violates the provisions of section 29; and
 - (l) Contravenes any other provisions of this Act
- commits an offence.
- (2) Any person who commits an offence referred to under this Act shall be liable upon conviction
- (a) as a first offender, to imprisonment for a term not exceeding one year or a fine not exceeding N1,000,000; and
 - (b) in the event of such person having been previously convicted under this section, he is liable to imprisonment for a term not exceeding two years or a fine of N2,000,000 or both.

PART XII

General provisions

48. Collection of fees

Notwithstanding any other provision of this Act, the Registrar shall collect fees from the applicant or any other person filling a document or requesting access of administrative action under this Act, for each application, extension, filling, inquiry or other administrative process or service.

49. Confidentiality and Disclosure

- (1) The contents of any license or assignment shall be confidential unless both parties agreed to permit access to a third party and only to the extent of the permission so granted.
- (2) The applicant may declare some portion of the application to be confidential, where declared so, the Registrar shall determine whether the application can be processed without the publication or other violation of that confidentiality, and give the applicant the option of altering his statement of confidentiality or withdraw the application.
- (3) Except as otherwise provided for in this Act, any person who discloses any information made available under the Act, except to-
 - a) The Minister, the Registrar or any other person for the purposes of carrying out his duties or the performance of his function under this Act;
 - b) A police officer for the purposes of an investigation or inquiry relating to the enforcement of the provision of this Act; or
 - c) Any other person when required to do so by any court or under any written law,

Commits an offence and upon conviction shall be liable to a fine not exceeding N5,000,000 or an imprisonment for a period not exceeding one year or to both.

50. Action against the state

- (1) Subject to the existing law on taking action against the State, this Act shall be binding on the Government with regard to its applications for breeder's right and other interests acquired or given in breeder's right to the same extent and with the same effect as its applies to any other person.

- (2) No claim shall lie against the State, the Minister, the Registrar or any other office for anything done in good faith in the discharge of duties under the powers conferred by this Act.

51. Breeders right in respect of existing varieties of recent creation

- (1) Where, according to Section 12, this Act applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of Section 14 even where the sale or disposal of to others described in that paragraph took place in Nigeria within four years before the filing date or, in the case of trees or of vines, within six years before the said date.
- (2) Within twelve months from the date of commencement of this Act, the breeder of an existing variety of recent creation may apply to the Registrar in respect of that variety to benefit from the provisions under paragraph 1 of this Section

52. Agreement with foreign governments

The Minister may enter into bilateral or multilateral agreements with the states and intergovernmental or non-governmental organizations in order to facilitate cooperation in testing.

53. Agents

- (1) When the breeder is a non-resident or in the case of a corporation, does not have its registered office in Federal Republic of Nigeria, he shall have an agent who is resident in Federal Republic of Nigeria.
- (2) The Registrar may, for any gross misconduct or prescribed cause or any other reasonable cause considered by the Registrar to be sufficient, refuse to recognize or to continue to recognize any person as authorized by the breeder to act in the capacity of agent.

54. Registrar to make guidelines

The Registrar shall make guidelines for the proper implementation of this Act and Regulations made under this Act.

55. Regulations

- (1) The Registrar shall with the approval of the Minister make Regulations under this Act.
- (2) Without prejudice to the generality of the sub-section (1) of this section, Regulations made shall prescribe -
 - a) various forms to be used under this Act;
 - b) the procedure to be followed in any proceedings before the Registrar;
 - c) specific information and facilities to be provided, and of the propagating and other materials to be submitted with respect to a variety;
 - d) the test, trials, examinations and other steps to be taking with respect to a variety, by applicants or by the Registrar and the time within with any such steps are to be taken; and
 - e) the fees to be paid in respect of-
 - (i) Application for the grants of breeder's right, for extension of its terms,
 - (ii) Maintenance of breeder's right,
 - (iii) Request for administrative review, including objections to nullity and cancelation of breeder's right, appeals from administrative decisions and other administrative actions,
 - (iv) Technical examination,

- (v) The inspection of obtained record in the Registrar or other transaction involving a breeder's right,
- (vi) Provision of certified copy of any entry therein, and
- (vii) Any other fees to be paid under this Act.

56. Interpretation

In this Act -

"Agent", in relation to an applicant or a holder of plant breeder's right, means a person who is duly authorized by the applicant or holder to act, on behalf of the applicant or holder;

"Applicant" means the breeder entitled to file an application for the grant of a breeder's right in accordance with the definition of "breeder" provided for in this Act;

"Breeder" means a -

- (a) person who bred or discovered and developed a variety,
- (b) person who is the employer of the person who bred or discovered and developed, a variety or who has commissioned the latter's work, or
- (c) a successor in title of a person mentioned in paragraph (a) or (b) as the case may be;

"Breeder's right" means the right of the breeder provided for in this Act;

"Business hours" means 9am-3pm Mondays –Fridays, excluding public holidays;

"Council" means the national agricultural seed council (NASC)

"Director General" means the director general of national agricultural seed council (NASC).

"Fund" means the Fund established under section 44 of this Act;

"Gazette" means the Federal Government Gazette;

"Minister" means the Minister responsible for agriculture;

"Ministry" means the Ministry responsible for Agriculture;

"Register" means the Register of plant breeders' rights kept in terms of section 6 of this Act;

"Registrar" means the Registrar of Plant Breeders' Rights appointed in accordance with section 4 of this Act;

"Propagating material" means a plant or part of the plant used to multiply the plant;

"Sell" means to offer, advertise, keep, expose, transmit, convey, deliver or

- (a) prepare for sale or exchange or dispose of for any consideration or
- (b) transmit, convey or deliver in pursuance of the sale;

"Variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be -

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

57. Short title

This Act may be cited as the Plant Varieties Protection Act, 2019.